

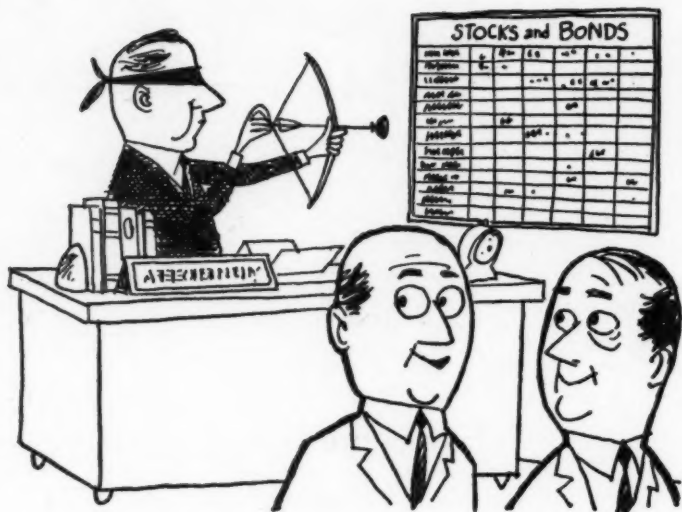
Jul 30 1958

# LOS ANGELES BAR BULLETIN



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# Los Angeles BAR BULLETIN

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## The President's Page

### Is the Status of Forces Treaty a Prelude to Better International Relations?

By E. AVERY "JUD" CRARY

President, Los Angeles Bar Association



E. Avery Crary

Bismarck's mastermind of military strategy, General Von Clausewitz, aptly defined war as "nothing but the continuation of politics by force of arms"—so it is that when the political policies of a determined nation may no longer be carried out through diplomatic channels, that nation resorts to violence.

We have, on several occasions during the past 45 years, been called upon to resist the furtherance of certain political policies by force of arms. This necessary course of action has resulted in our assuming, whether we like it or not, a new role in the world family of nations. As a part of our role as a first-line nation in the international field, we have for the first time maintained troops in foreign countries performing what might be termed "garrison duty" for the Free World. This situation has resulted in our having to face many new problems, one of which was and is the jurisdiction of military courts over offenses by members of our armed forces, as well

as their dependents and civilian employees, against the laws of foreign countries in which they might be stationed. Our first obligation is of course to our armed forces personnel, their dependents and civilian employees. I believe, however, if we study the results of the Status of Forces Treaties between the NATO nations and the record of their enforcement, we will agree that not only has our obligation to our own forces been fulfilled, but these Treaties demonstrate what may be accomplished between nations by way of international rules and regulations in other fields.

In brief, the Status of Forces Treaties concern the jurisdiction between the state sending troops and the receiving or host state as to offenses by such troops against the laws of either the host or sending state. Jurisdiction is concurrent in the vast majority of cases. The military forces of the sending state have *primary* jurisdiction in all cases of concurrent jurisdiction if, (a) the offense is solely against the person or property of another member of the forces of the sending state or, (b) if the offense arises out of any act or omission done in the performance of official duty. In all

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other cases of concurrent jurisdiction the primary right to try the offender rests with the host state. The Treaties further provide that the state with primary jurisdiction will give "sympathetic consideration" to waiver of that jurisdiction in cases of particular importance. Our Department of Defense seeks a waiver from the host state as a matter of policy unless overall relations with that country would make it inadvisable in a particular case. Waivers have been granted in approximately 70% of all cases where concurrent jurisdiction existed with other countries, and in the 30% tried by civilian courts of foreign countries, in only approximately 1½% thereof was actual confinement imposed and this for only relatively short periods. Japan waived her primary right of trial in 97% of the concurrent jurisdiction cases arising in that country.

The case of specialist William Girard has made us particularly conscious of the Treaties. It appears that jurisdiction in that case was given to the Japanese by our Department of Defense on a decision of our State Department, although Girard's Field Commander had held that he was "on duty" at the time the offense was committed. That situation, as might be expected, resulted in great controversy. The criticism, however, concerned more the administration of the Treaty than its merits.

The Treaty is an imaginative and constructive solution of a unique problem in the foreign relations of the United States. It indicates that much might be accomplished by way of law and order in other fields of international relations and it should encourage efforts to establish laws, rules and regulations relating to international trade, investments, and property rights, which would insure the observance of the sanctity of contracts and provide for their enforcement between sovereign states, between citizens of sovereign states, and between sovereign states and citizens of foreign states.

It would seem that we could well spend more time, effort and money toward the furtherance of such objectives to the end that, in these days of keen nationalism, the desires and determinations of nations to further their political policies by force of arms be blunted and deterred. This does not mean that we should not "keep our powder dry" at the same time we are endeavoring to negotiate solutions of the many existing problems.

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## EDITORIAL

The remarks concerning Marriage Mills in the court survey report published in the May-June, 1958, issue of the Journal of the State Bar of California merit close attention by the members of the Los Angeles Bar Association, both as officers of the courts, as advocates for their clients and as citizens.

When the Legislature established that only members of the judiciary were authorized to perform civil marriage ceremonies (Civil Code Section 70), it is unlikely that any problem of court congestion was foreseen. If all the judges who are available and required to preside at the dissolution of the status were also available to officiate at its inception, no problem would exist.

However, a very definite problem does exist. A real social need for the dignified and efficient performance of civil marriages exists, not only in Los Angeles County but in any populous county. Citizens desiring a civil marriage ceremony should not be required to hunt around for a judge willing to put aside the normal judicial functions to perform the ceremony. Such necessity is not only improper but undignified at a time when dignity is required.

Furthermore the time of our limited number of Superior and Municipal Court judges is too valuable to be expended in the performance of such ceremonies, if a reasonable alternative is available. Litigants are entitled to a trial of their cases without interruption for such ceremonies and yet citizens should be able to find an officer to perform the ceremony without undue delay.

The answer to this problem has been found by other jurisdictions where civil marriages are mandatory, rather than optional. An official, not part of the judiciary, is delegated the responsibility of performing civil marriages. As an expert to whom this duty has been assigned it is inevitable that such an official can perform the ceremony in more fitting circumstances and in a more fitting way than is possible in the chambers or the courtroom of an active judge of the Municipal or Superior Court.

Even considering the cost of the salary of such an officer and the cost of suitable quarters, this reform would still result in a substantial saving of the taxpayers money. A reasonable statutory fee might possibly be required to help defray the costs. The public de-

*(Continued on page 286)*

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# Los Angeles to Play Host to 81st Annual Meeting of A. B. A.

By WILLIAM P. GRAY\*

Los Angeles will be the site of the 81st Annual Meeting of the American Bar Association, August 18 through 29. Bar Associations from all over Southern California are cooperating to make this 81st annual meeting the outstanding one of all.

Well over 250 speakers will appear on the various programs. Advance registrations have been heavy and point to a final attendance of 8,000 registrants and wives. Well over 250 speakers and panelists will appear on the various programs. Headquarters will be the Statler Hotel.

The main ABA sessions will run from August 25 through 29, but meetings of affiliated national legal organizations and ABA sections and committees will begin a week earlier, so the full program of professional activities will span a 12-day period starting August 18.

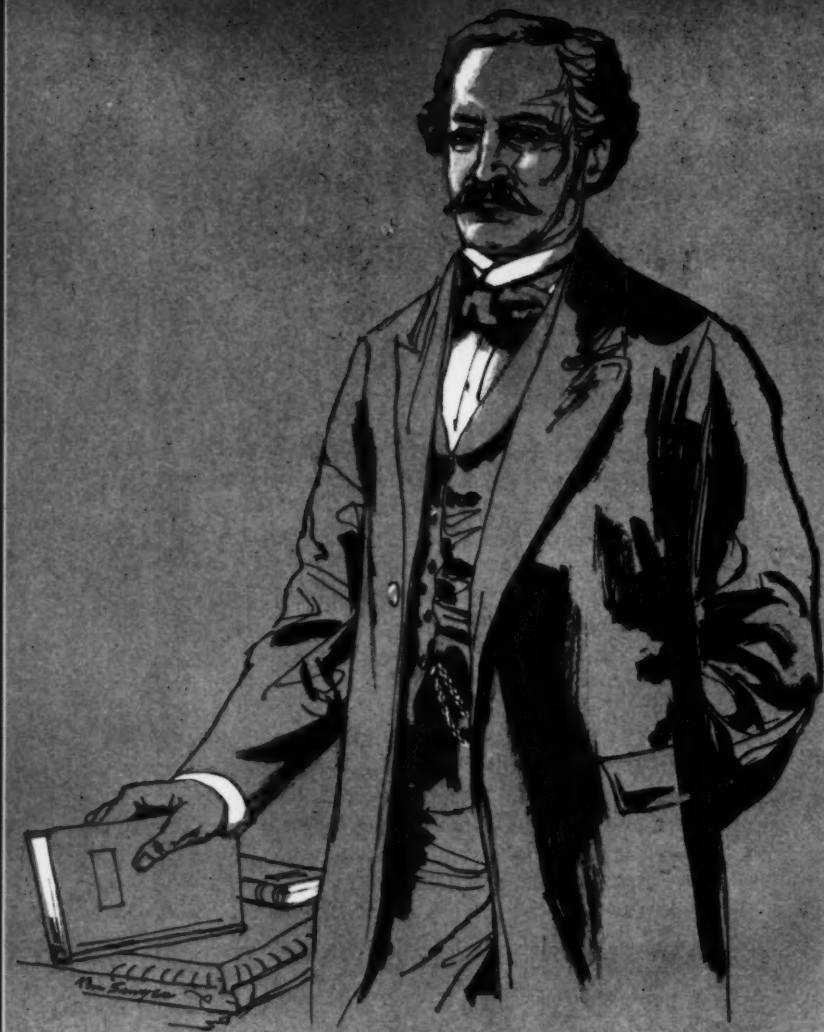
Major addresses by Charles S. Rhyne, president of the American Bar Association; the Rt. Hon. Sir Harry Hylton Foster, Q. C., M. P., Solicitor General of Great Britain; Leslie E. Peppiatt, M. C., president of The Law Society (England); Arthur Kelly, president of The Canadian Bar Association, and others, will lend a distinctive international air to the meeting. Mr. Rhyne will speak on "World Peace Through Law" at the opening session of the Assembly August 25.

Each of the existing 17 sections of the ABA, embracing every field of practice, has arranged a top-level program. Many of these will go beyond the traditional areas of professional interest to include trends and developments in fields of law still in an embryonic stage.

## NEW SECTION TO COPE WITH FAMILY LAW PROBLEMS

A step that may prove a milestone in the nation's efforts to alleviate one of its most pressing and perplexing problems—that of curbing the alarming divorce rate and rise in juvenile delinquency—will be taken when the organization's 18th and newest section—the Section of Family Law—will be formally established. Creation

\*Chairman Host Committee for the 81st Annual Meeting of the American Bar Association.



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of the new section will culminate a decade of effort by a dedicated group of lawyers and judges interested in improving the administration of justice in the important field of family relationships.

It will meet for the first time at the Biltmore Hotel in Los Angeles August 24-26 to organize its membership, adopt by-laws, and nominate and elect officers.

The purpose of the new section will be to promote improvements in the administration of justice in the area of family law by study, conferences, and publication of articles and reports dealing with legislative and administrative law matters.

Five special programs covering key aspects of atom-space-satellite law are planned. For example, the ABA's Section on Mineral and Natural Resources Law will have a program devoted to "States' Rights and Atomic Energy." The ABA Section on Public Utility Law will discuss the "Role of Private Industry and Government in the Nuclear Power Program." A "Symposium on Missiles, Satellites, and Outer Space" will be conducted by the Section on International and Comparative Law. Also to be discussed is the impact of the atom on liability, property, and marine insurance and workmen's compensation and the problems to be faced in finding protection against atomic hazards.

Other unusual programs will include a discussion of the English-type clients' indemnity fund proposal. The first national conference on bar public relations in several years, and a legal film festival, are other unusual features.

The growing emphasis on international law will be recognized too. The Association's new special Committee on International Law Planning is readying its first report for submission at the annual meeting. Thomas E. Dewey heads the committee.

In addition to the American Bar Association itself, eight other national legal organizations will hold meetings immediately preceding or during the ABA sessions. The schedule of meetings:

The *National Conference of Commissioners on Uniform State Laws*, which meets at the Hotel Statler August 18-23, will consider a dozen proposed uniform and model acts for submission to state legislatures. Those to be considered for final approval are: water resources act, public defender act, estate tax apportionment act, simplification of security transfers act, facsimile signatures act, amendments to principal and income act and reciprocal enforcement of support act.



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From August 19-24, the *Conference of Chief Justices* will be meeting at the Huntington-Sheraton Hotel. Highlighting the sessions will be a report of the committee on federal-state relations presided over by John R. Dethmers, Conference chairman and Chief Justice of Michigan. Other topics to be considered are court administration and the law governing atomic energy, right to use of water and use of public authorities.

The *National Legal Aid Association* is holding its three-day meeting at the Hotel Huntington in Pasadena, August 20-22. Special workshop meetings and discussion groups are scheduled.

The *American Bar Foundation* Board of Directors meets at the Hotel Statler on Aug. 21. An all-day meeting is planned by the *National Conference of Bar Secretaries* for Aug. 22 at the Hotel Statler.

The *National Conference of Bar Presidents* will meet at the Statler all day Saturday (Aug. 23) and Sunday afternoon. A special workshop session on public relations will be one feature of the program for the bar presidents.

The *American Law Student Association* is holding its sessions at the Hotel Mayfair, August 23-27, and for the first time will have a workshop conference for student bar presidents on Aug. 26. The *National Association of Women Lawyers* meets at the Hotel Statler August 24-29.

On August 27, The *American Judicature Society* will meet and hear a talk by Warren Olney III, Director of the Administrative Office of the U. S. Courts, at the Statler.

#### HOUSE OF DELEGATES

Following is a summary of major issues to come before the Association's governing body, the House of Delegates when it meets on August 25, 26, 28 and 29:

##### Supreme Court Hearings

At the Association's Midyear meeting in Atlanta, Ga., last February, the House approved in principle a resolution favored by the ABA's Committee on the Federal Judiciary calling for "appropriate means to be established to assure the participation of a nine-member court in cases decided by the U. S. Supreme Court." The method of selection recommended will be reported to the House by the ABA's Committee on Jurisprudence and Law Reform.

##### Courtroom Photography

Action is scheduled on a proposed restatement of controversial

Judicial Canon 35 prohibiting photography and the televising of courtroom trials. At the Atlanta meeting the House deferred the issue following a 90-minute hearing during which spokesmen for the press, radio and television industries, and the bar, were heard.

#### **Judicial Selection**

A resolution urging the creation of an independent commission to aid the President of the U. S. in screening candidates for federal judgeships so as to take judicial selection out of the "area of political patronage" will be considered.

#### **Space Law Parley**

A recommendation by the ABA's Committee on Aeronautical Law, referred at the Midyear meeting to the Association's Section of International and Comparative Law, that President Eisenhower be urged to call at once an international conference on "legal problems relating to the use of space" will be discussed.

#### **Election of New ABA Officers**

The House of Delegates will elect new ABA officers. President-nominee is Ross L. Malone of Roswell, New Mexico, former Deputy Attorney General of the U. S. The nominee for Chairman of the House of Delegates is Sylvester C. Smith, Jr., of Newark, N. J.,

## **Resolution of Board of Trustees Los Angeles Bar Association**

**ADOPTED JULY 1, 1958**

WHEREAS, it has been reported to the Trustees of the Los Angeles Bar Association that some members of the Bar have made it a practice of making gifts, at Christmas and other times, to public officers and employees of public offices, including court attaches, and

WHEREAS, such practice might be interpreted as being made for the purpose of influencing the actions of such public officers or employees in the performance of their duties.

NOW, THEREFORE, BE IT RESOLVED that the Board of Trustees of the Los Angeles Bar Association hereby disapproves of members of the Bar making gifts at any time to public officers or employees of public offices, including court attaches.

General Counsel for the Prudential Insurance Company of America.

### SOCIAL EVENTS

In addition to the general sessions and the comprehensive and varied working sessions, there will be a gala series of social events and entertainments.

The two main social events will be the President's Reception to be held on the south lawn of the Ambassador Hotel and an all-day excursion to Disneyland, complete with refreshments, entertainment and a barbeque supper followed by a stage show.

Included also will be a cocktail party and buffet dinner for the working press to meet the principal participants at the convention.

Trips to television studios, Huntington Library, Marineland, Forest Lawn, and other points of interest and importance in the area, have also been planned.

Tickets to the Hollywood Bowl, Greek Theater and L. A. Dodger baseball games will be available.

In addition there will be a number of luncheons, dinners, parties, and dances for various segments of those attending the convention, including: a dinner dance held by the Commissioners on Uniform Laws; a dinner for the Conference of Chief Justices; cocktail party for the Conference of Bar Association Presidents; the annual Board of Governor's Dinner; cocktail party and dinner dance for the Junior Bar Conference, law school luncheons, section luncheons and dinners.

The final event will be the Black-Tie annual banquet to be held at the Statler-Hilton.

The Budget and Finance Committee, under the chairmanship of Albert Lee Stephens, Jr., has raised the \$58,000 budget which the Host Committee will use to finance transportation and the various events for which they are responsible.

There follows the list of local attorneys who are heading the various committees which together comprise the Host Committee for the Convention:

Honorary Chairman—Lloyd Wright

Chairman—William P. Gray

Vice-Chairman—J. Stanley Mullin

Budget and Finance—Albert Lee Stephens Jr., Chm., Maynard J. Toll, V.-Chm.

Entertainment—Grant B. Cooper and Lloyd Wright, Jr., Co-Chairmen



Cocktails and Dinner Committee—Lawrence J. Larson, Chm., Donald J. Dewar, V. Chm.

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Registration and Hotels—G. Bentley Ryan, Chm.; James E. Cross, V. Chm.

Host Committee for Conference of Chief Justices—Hon. Douglas L. Edmonds, Chm., J. E. Simpson, V. Chm.

The overall plans for the convention are being handled by a Steering Committee composed of the Chairmen and Vice-Chairmen set forth above together with Richard F. Alden, George W. Cohen, Hugh Darling, Louis Elkins, Stanley Johnson and Augustus F. Mack, Jr.

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## **A. B. A. Annual Meeting — Religious Services**

The Southern California Host Committee of the American Bar Association and its various sub-committees have not overlooked the religious needs of the A.B.A. members and their families who will attend the annual meeting here in August. Along with elaborate plans for cultural, professional and social activities, special arrangements for religious services have been made by various faiths and denominations. A list of these services follows immediately hereafter.

Illustrative of these special arrangements will be the celebration of a "Red Mass" by the Roman Catholic Church. Following the above mentioned list of religious observances you will find an article on the origin and significance of the "Red Mass" which we believe will be of interest to lawyers regardless of faith.

### **LIST OF SERVICES:**

On Saturday, August 23:

#### **JEWISH SERVICES**

Wilshire Boulevard Temple, 636 South Hobart Boulevard. Senior Rabbi Edgar F. Magnin, D.D., S.T.D. Associate Rabbi Maxwell H. Dubin, D.D. Associate Rabbi Alfred Wolf, M.H.L. Services at 10:30 A.M.

On Sunday, August 24:

#### **BAPTIST**

Temple Baptist Church, 427 West Fifth Street. J. Lester Harnish, D.D., Pastor. Sunday School, 9:45 A.M. Worship, 11:00 A.M. and 7:00 P.M. Dr. Ralph Walker of New York City, Guest Speaker.

#### **PROTESTANT EPISCOPAL**

St. Paul's Episcopal Cathedral, 615 South Figueroa Street, 11:00 A.M. The Sermon will be delivered by The Right Reverend James A. Pike, J.S.D., S.T.D., Bishop Coadjutor of California, formerly Dean of The Cathedral of St. John the Divine, of New York City. The Morning Prayer will be led by the Very Reverend David de L. Scovil, D.D., Dean of St. Paul's Cathedral.

St. James' Episcopal Church, 3903 Wilshire Boulevard. The



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Reverend Ivor Ira Curtis, Rector. 8:00 A.M. Holy Communion; 9:15 A.M. Morning Prayer and 11:00 A.M. Morning Prayer.

#### METHODIST

First Methodist Church, 813 South Hope Street, Church Services 10:45 A.M. Dr. J. Richard Sneed will deliver the Sermon upon the topic "Don't Shrink In Life's Wash." Special music will be Tenor Solo: "The Beatitudes" . . . Malotte, Anthem: "Holy Father, We Adore Thee" . . . Bortniansky.

Wilshire Methodist Church, Wilshire Boulevard at Plymouth. Reverend Winston Trever, Minister. Church services at 9:30 A.M. and 11:00 A.M.

#### PRESBYTERIAN

Emanuel Presbyterian Church, 3300 Wilshire Boulevard. William Samuel Meyer, D.D., Pastor. Worship 11:00 A.M. and 8:00 P.M. C. Ralston Smith, D.D., Speaker, of First Presbyterian Church, Oklahoma City.

#### ROMAN CATHOLIC

A committee of Catholic lawyers and judges of the Archdiocese of Los Angeles have arranged for a Solemn Pontifical Mass, traditionally known to the legal profession as a "Red Mass," in the Church of St. Vincent, Adams and Figueroa Streets, on Sunday, August 24, at one o'clock P.M.

His Eminence, James Francis Cardinal McIntyre will preside on the throne and will deliver the sermon.

The Celebrant of the Mass will be the Most Reverend Timothy Manning, D.D., Auxiliary Bishop of Los Angeles.

The Committee sponsoring this occasion extends a cordial invitation to the Members of the Bench and Bar, their families and their guests, to attend this Mass. The entire church will be reserved for them.

#### CONGREGATIONAL

First Congregational Church, Sixth and Hoover Streets. Dr. James W. Fifield, Jr., D.D., Minister Services, 9:30 A.M. and 11 A.M. Guest Pastor, L. Wendell Fifield, D.D., will give the sermon at both services.

#### LUTHERAN

First English Lutheran Church, 3119 West Sixth St. Albert B. Schwartz, Pastor. Morning worship 9:30 A.M. and 11:00 A.M.

**THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS**

1209 South Manhattan Place. Sunday School at 10:30 A.M.;  
Sacrament Meeting at 5:30 P.M.

**CHRISTIAN**

Wilshire Christian Church, Wilshire Boulevard at Normandie.  
Dr. Hoke Smith Dickinson, Pastor. Sunday School 9:30 A.M.;  
Morning Worship 10:45 A.M.

**CHRISTIAN SCIENCE**

Third Church of Christ Scientist, 734 South Hope Street. Sun-  
day Services 11 A.M. and 8 P.M. Reading Room same address,  
Hours 8 A.M. to 9 P.M. (Wednesday to 7:30 P.M.)

**UNITARIAN**

First Unitarian Church, 2936 West Eighth Street. The Reverend  
Stephen H. Fritchman. Services at 10:50 A.M.

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## The Red Mass

### A Legal and Judicial Tradition

EDWARD R. TIEDEBOHL\*

In the early days of the thirteenth century, across all of what was then totally Catholic Europe, there arose almost spontaneously a contemporary adaptation of the Mass, the Church's age old expression of dependence on God, to the peculiar needs and institutions of the courts and the law. This Mass, according to the earliest traditions, was called from the outset the Red Mass, so designated because of the color of the vestments used by the priest in celebrating this central ritual of the Church.

The earliest records of the thirteenth century indicate that the Mass arose principally in England, France and Italy. The most careful research, however, up to the present day has given no full documentation of its early origins.

#### THE ENGLISH TRADITION

The peculiarly English tradition of the Red Mass commenced, as far as is known, during the reign of Edward I, about the year 1310. As in France and Italy, the Bench and Bar had but one purpose in joining the ordinary and traditional celebration of Mass to the traditions and processes of the Courts and the Law. In essence, the Red Mass was meant to call upon God the Holy Ghost, the Third Person of the Trinity, to grant light and inspiration to the lawyer in pleading and to the judge in adjudicating during the coming term of court.

From the very beginning it was the custom for the entire Bench and Bar to attend the Red Mass at the opening of each term of court. In England the legal year was divided into four terms: Hilary, Easter, Trinity and Michaelmas. The feast of Saint Hilary came on January 11th; Saint Michael's on September 29th. On a date close to Michaelmas, the first term, the courts, Parliament and the universities all began the legal activities of the year. The early tradition of celebrating Mass at the beginning of each of the four terms gradually lapsed into desuetude, and today throughout the modern world the celebration of the Red Mass can be seen only at the beginning of the year.

\*LL.B., Northwestern University, Member of Rosenthal, Kurz and Tiedebohl. Member of Chicago Bar. Present President of Catholic Lawyers Guilding of Chicago. Reprinted from University of Detroit Law Journal, November, 1954, by permission of the author and publisher.

### THE MASS AT WESTMINSTER

In the days of Edward I, twelve judges of the High Court sat on the King's Bench at Westminster. These judges, who were all doctors of the law, wore the impressive robes belonging to that office and attended the Red Mass in a body. Again, tradition seems to be unable to determine the exact location of the principal Mass. It was celebrated either in the famous Chapel of St. Stephen in the palace of Westminster or in Westminster Abbey itself. Due to the confusion on this point, it is highly possible that the Masses were celebrated first in one and then in the other on alternate terms.

Since the priest celebrant, or more properly the Cardinal Archbishop, garbed in red vestments, always offered a votive Mass of the Holy Spirit, the judges, conforming to the ecclesiastical traditions, appeared at the Mass in a deep liturgical red. It is interesting to note, as some historians wish to point out, that this scarlet of the early judges became the distinctive hue of the later university doctoral gowns. This also explains rather obviously why this judicial gathering was called popularly the Red Mass.

In England, in more recent times, notably from the late eighteen hundreds until the early nineteen hundreds, the Red Mass has been said at the Chapel of Saints Anselm and Cecilia, Lincoln's-Inn-Fields, commonly known as the Sardinian Chapel (from its former connection with the Sardinian Embassy). In 1904, however, the Mass was moved to the new cathedral in Ashley Gardens where it is now celebrated on October 24th.

### THE TRADITION IN FRANCE

The venerable King Louis IX, who was later raised to the altars as Saint Louis, built in France the famous La Sainte Chappelle to house the precious relic of the Holy Crown of Thorns which he had obtained from Constantinople while on the Crusades. For many centuries La Sainte Chappelle was the chapel of the Order of Advocates and was designed for the exclusive use of the Courts of Justice. It is associated with the Paris Bar as no other place in the City, for the Messe Rouge existed as an immemorial custom dating its inception to 1245 A.D. Thus, it would seem that France could rightly claim to precede England in celebrating this particular judicial function and ecclesiastical rite.

It is rather appropriate that in France as the centuries passed, the Messe Rouge in certain localities was celebrated in honor of the famous lawyer saint, Ives. Born in Brittany in 1253 A.D., Ives was

canonized in 1347 A.D. His feast is kept on the nineteenth of May. Since he is the universal patron of lawyers throughout the world, it is understandable that the French should particularly honor him in the Mass which was primarily offered to invoke the light of the Holy Spirit on the conduct of the courts and the law.

However, in 1906, in keeping with the modern tendencies of the French people, a majority in the Parliament considered such an observance of religious faith by the elite of the Paris Bar, if not of the nation, to be offensive to their current conception of liberty of conscience.

Thus, a resolution was passed secularizing the Chappelle and prohibiting the celebration of the Messe Rouge. However, during the Great War a temporary suspension of the resolution was obtained by the Paris Bar, and once again the Messe Rouge was celebrated by the Cardinal Archbishop of Paris out of respect to the lawyers who had died in the battle for France and humanity. This unfortunately was not to continue and a few years later the same decree of secularization was passed and the Messe Rouge in France once again passed into history.

#### ITALY AND ROME

The Red Mass in Rome and Italy has always centered around the Roman Rota, which is the supreme judicial body of the Roman Church. The Rota itself was instituted during the reign of Innocent IV, circa 1243 A.D. It was this same Innocent who appointed the auditors of the Rota as the first permanent jurists for the provinces of the Pontifical States.

Whether the Red Mass began in the earliest days of the Rota or was of later institution is unknown. It has been established, however, that the Red Mass was inaugurated for the specific purpose of calling down divine assistance on the work of the Rota and asking the Holy Spirit to inspire these judges in the conduct of their ecclesiastical affairs.

#### THE MASS TODAY

The late Right Reverend Monsignor William E. Cashin of Saint Andrew's Church of New York City had the honor of reviving the Red Mass in the United States. In 1928 he caused to be celebrated the first Red Mass for the Guild of Catholic Lawyers in New York City.

There are today about fifteen cities in the world where the Red Mass is an institution, and in about twenty or more where the early beginnings of the tradition can be seen.

### THE SIGNIFICANCE BEHIND THE MASS

So it is an old custom coming down to us through the centuries for the jurists of a community once a year to gather before the Altar of God while assisting at Holy Mass to ask the light and the strength which only God's love can give them to fulfill their high public responsibility.

It may have been that this expression did come down to us because of the red gowns which the jurists wore. Many today, however, do maintain that it had another, deeper origin which in fact tells why the jurists themselves wore the red robes. From the beginning this Mass was celebrated exclusively as an invocation of the Holy Spirit. The red robes and the red vestments of the celebrant were the red of Christian significance. So close in the life of the lawyer is the truth inspired by the Holy Spirit and the willingness to defend that truth at the cost of blood that it takes little effort for the Christian lawyer to join the two together as he stands at the beginning of the term of court. He implores the help of God on his work and asks the Holy Spirit to keep him true to the truth of justice even to the shedding of the blood. This devotion then is called the Red Mass.



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## American Bar Association Tax Section Annual Meeting Plans

The 1958 annual meeting of the American Bar Association, to be held in Los Angeles in August, will be the first meeting to be held in California since the San Francisco meeting in 1952, and the first meeting to be held in Southern California since 1935. A heavy registration and attendance are anticipated for the meeting by the American Bar Association.

The Section of Taxation of the American Bar Association will have a full and interesting program at the meeting. Business sessions will be held at the Statler Hilton Hotel commencing Saturday, August 23, and continuing through Sunday and Monday, August 24 and 25. The business sessions will consider reports of the many committees actively working in the tax field, among which will be several legislative proposals of interest to the tax bar as well as to the bar generally. Some of these will provide vigorous debate. As the American Bar Association has enjoyed some success in having its legislative proposals adopted by Congress, it constitutes the major professional forum where a lawyer can hope to air his grievances effectively. For this reason, many legislative proposals are ordinarily advanced at these meetings, all are seriously considered and debated, and some are adopted into the Association's legislative program.

Among the expected resolutions to be presented are proposed amendments to the corporate-stockholder provisions of the 1954 Internal Revenue Code. These include three proposed amendments to Section 337 of the Code—the Section which eliminates the "double tax" which otherwise would apply upon sale of assets in the course of corporate liquidation. The proposals are to permit Section 337 to apply notwithstanding distribution to a liquidation trust or agency; the treatment of involuntary conversion as a sale or exchange for purposes of the Section; and successive liquidations of controlled corporations.

The text of the legislative proposals, and the arguments offered in favor of them, will be submitted to members of the Section in advance of the annual meeting through the printed program of the Section.

Other legislative proposals in the corporate-stockholder field relate to simplification of attribution rules under Section 318 of the Code; and resolutions in opposition to certain recommendations of the Mills advisory group on optional dividends and charitable contributions of Section 306 stock.

A legislative proposal of particular interest to lawyers is one which would permit current deductions for a variety of attorney's fees which the Internal Revenue Service now requires be capitalized instead of currently deducted.

The Section plans a luncheon meeting on Sunday, to be held at the Statler Hilton. This luncheon meeting will offer as the speaker Judge William J. Jameson, Judge of the District Court of Montana, and former president of the American Bar Association. Judge Jameson will speak upon the subject of lawyers and certified public accountants who practice in association. Judge Jameson is and has been the Chairman of the American Bar Association Committee on Professional Relations.

On Tuesday, August 26, two technical sessions will be presented. The morning session will be a panel discussion on the subject of "Tax Problems of the Independent Motion Picture and Television Producer." The program will be presented in the form of a meeting of two tax attorneys, a general attorney, and a motion picture or television star who will discuss the problems presented by the latter's venture into independent film production. Among the problems to be discussed will be the form of entity to be used, including consideration of the use of a foreign corporation; amortization of films; disposition of literary properties; and the collapsible corporation problem upon the ultimate sale of the business.

The technical session to be presented on the afternoon of Tuesday, August 26, will be concerned with state and local tax problems.

Members of the bar interested in tax problems are invited to attend the sessions. Past sessions have provoked lively, stimulating, and often entertaining debate upon controversial problems in the tax field. It is expected that the Los Angeles session will prove to be no exception to the general rule.

## TAX REMINDER

### GIFTS OF SECURITIES TO MINORS ACT TAX BENEFITS AND PITFALLS

STAFFORD R. GRADY\*

In 1955 California adopted the California Gifts of Securities to Minors Act.<sup>1</sup> It thus joined many states in attempting by local law to facilitate making of gifts of securities to minors (through a custodian) without the intervention of a guardianship or trust. The California law is quite similar to that adopted in several other states and it provides in substance that a donor may make a gift of securities to a person who has not attained 21 years by delivering them to a custodian for the minor until he reaches 21. If the securities are in registered form they must be registered in the name of the donor or in the name of an adult member of the minor's family or in the name of the minor's guardian, expressly as custodian for the minor; if the securities are in bearer form they must be accompanied by a "deed of gift." The custodian may apply as much of the income and principal as he deems necessary for the support, maintenance, education and general use and benefit of the minor; the minor, or his estate if he dies before reaching that age, receives whatever remains upon attaining 21 years.

The Commissioner of Internal Revenue has ruled that a transfer of securities to a minor-donee pursuant to the statute adopted by the State of Colorado (which is similar in substance to the California law) constitutes a completed gift, and not a gift of a future interest, for Federal gift tax purposes at the time the transfer is made; that such a gift falls within the purview of Section 2503(c) of the Internal Revenue Code and, therefore, qualifies for the annual gift tax exclusion authorized by Section 2503(b).<sup>2</sup>

The Commissioner has also ruled that income from the securities given is taxable to the minor-donee except to the extent actually used to discharge the parents' duty to support the child; to the extent that the income is thus used it constitutes income taxable to the parent.<sup>3</sup>

\*Member of the Los Angeles Bar, member of the Taxation Committee, Los Angeles Bar Association, and member of the firm of Mackay, McGregor & Bennion.

<sup>1</sup>California Civil Code, Sec. 1154 et seq.

<sup>2</sup>Rev. Rul. 56-86; I.R.B. 1956-11, p. 11.

<sup>3</sup>Rev. Rul. 56-484; I.R.B. 1956-2, p. 23.

The California statute requires that in the event of the minor-donee's death before reaching majority, the property (to the extent not previously expended for his benefit) be paid over to his estate.<sup>4</sup> In view of this fact, there appears to be little doubt but that the fair market value of any gifts made under the custodian statute will be fully includible in the minor-donee's estate.

From the foregoing rulings it would appear that logic would dictate that the securities given should not be includible in the donor's gross estate. However, an unwary donor-custodian would subject himself to the estate tax pitfall which has resulted from a recent Commissioner's ruling<sup>5</sup> to the effect that the value of the property transferred by a donor to himself as custodian for a minor-donee, pursuant to the provisions of the model custodian act adopted by a number of the states, is includible in the *donor's* gross estate for federal estate tax purposes in the event of the donor's death while acting as custodian before the donee attains the age of 21 years.<sup>6</sup> This ruling is based upon the theory that because of the custodian's discretionary power under the Act to control the disposition of corpus and income during the period of custodianship, he has retained sufficient powers to require the inclusion of the value of the transferred property in his gross estate under Section 2038(a)(1) of the Internal Revenue Code of 1954, as a transfer in respect of which he retained a power to alter, amend, revoke or terminate.

This ruling has been issued despite the fact that the California Gifts of Securities to Minors Act (as well as the counterpart acts adopted in several other states) provides that a gift made pursuant to its terms "... shall be irrevocable and shall convey to the minor indefeasibly vested legal title to the securities thus delivered, . . .".<sup>7</sup> It thus appears that the Commissioner has attempted to create for himself an option to include in the gross estate of either the donor or the donee, whichever dies first before the donee reaches 21, the value of the identically same property. One precaution might obviate this difficulty: the donor should choose someone other than himself as custodian.

<sup>4</sup>California Civil Code Sec. 1156.

<sup>5</sup>Rev. Rul. 57-366; I.R.B. 1957-32, p. 20.

<sup>6</sup>The possibility of the Commissioner taking such a position was pointed out by Robert F. Schwarz's article "Rich Gifts May Wax Poor," which appeared in the December, 1956 issue of the Los Angeles BAR BULLETIN, Vol. 33, No. 2, p. 55.

<sup>7</sup>California Civil Code Sec. 1155.

## Opinion of Committee on Legal Ethics Los Angeles Bar Association

### Opinion No. 244

(October 17, 1957)

ADVERTISING AND SOLICITATION. Attorney may ethically permit law book publisher to distribute, free of charge, copies of article written by him to persons attending Tax Institute.

A lawyer requests the opinion of this Committee on a question raised by the facts set forth in the succeeding paragraph.

During the course of the proceedings of the Tax Institute to be held in Los Angeles, a law book publisher will maintain and display, at the place where the proceedings are held, a stock of books and services published by it. The publisher will also distribute, free of charge, to attorneys and others who attend the Institute copies of articles from such publications. The stated purpose of such distribution is to create good-will for the publishers. The articles available for distribution will include an article written by the lawyer submitting the inquiry under review.

The question presented by the lawyer is whether she may, with propriety, permit the publisher to distribute copies of the law article written by her.

Both Canon 27 of the ABA Canons of Professional Ethics and Rule 2 of the California Rules of Professional Conduct prohibit direct and indirect advertising by attorneys. At the same time, a well-recognized exception as to writing articles for publication has been made. (See Canon 40, ABA Canons of Professional Ethics.) The publication of an article obviously includes the actual distribution thereof to the customers of the publisher. Moreover, it would seem to be immaterial whether the distribution is made from a central point or from decentralized points, whether it is made at one time or at successive times, and whether such customers pay for the articles or receive them free of charge as a gesture of good-will by the publisher.

In these circumstances, it is the opinion of this Committee that the inquiring lawyer may ethically permit the publisher to distribute her article under the facts as submitted.

A word of caution should, however, be added. Although the

writing and publication of law articles do not, in and of themselves, offend Canon 27, the improper distribution by the attorney may have that effect. Thus, it has been held that, while an attorney may properly furnish copies of articles to persons who request them and to other persons where justified by personal relations, distribution by him to others would violate that Canon. (See Opinion No. 507, May 3, 1939, New York City Bar Association; Drinker, Legal Ethics, P. 248.)

The distinction between the two situations would seem to be as follows: If the distribution, whether primary or secondary, is under the control of the publisher and is made to further the interests of the publisher, no ethical issue is raised. On the other hand, if the distribution is actually controlled by the attorney, even though it is nominally under the control of the publisher, and if the distribution is made to further the interests of the attorney, distributions to persons other than those in the permitted classes would be unethical.

This opinion, like all opinions of this Committee, is advisory only (By-laws, Article X, Section 3).

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## Olive Branch Extended — A Plea for Medico-Legal Cooperation\*

As might be expected a recent unrestrained attack on the legal profession by one of our members at the meeting of the International College of Surgeons was received with what the critics frequently call mixed notices.

Comments ranged from that of the staid New York Times which called it "an extraordinary vehement" attack on the legal profession to a flamboyant remark to the effect that "doctors have spent so much time and money on public relations that they are beginning to believe all the nice things that they have paid to have said about them. The public has been led to believe, and it seems that the medical profession itself thinks it's true—that any self-sacrificing doctor will interrupt his golf game or at two or three in the morning will rush off and attend a patient."

Cooler heads in both professions certainly question the wisdom of either of the above approaches. While those who feel they have been victimized by attorneys may endorse the sentiments, it should be remembered that the majority of attorneys do not condone the tactics of a few any more than the medical profession is proud of the paid expert witness who will slant his testimony in favor of which ever party is paying the bill. A good colleague is entitled to his opinion but as was said a long time ago, the right of free speech doesn't imply the right to yell fire in a crowded theatre.

Charles S. Rhyne of Washington, D. C., American Bar Association president, issued the bar's answer to Doctor Emil Seletz of Los Angeles, the speaker referred to, in a formal statement after an address to members of the Rhode Island Bar Association.

Rhyne said Doctor Seletz "has done great injury to the public interest by his false and misleading characterization of court procedures and lawyer technique in seeking the truth from doctor witnesses.

"Please note that no approving statement has come from the

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\* Reprinted from the Los Angeles County Medical Association Bulletin, May 1, 1958. For a discussion of the new legal-medical code see J. Marriion Wright, *New Legal Medical Code To Aid Lawyers in Malpractice Cases*, in the May, 1958 issue of the LOS ANGELES BAR BULLETIN, Vol. 33, No. 7, p. 195.

American Medical Association or any other doctor in a position of responsibility in the medical profession," he said.

Nor has any approving statement been issued by the Los Angeles County Medical Association.

Doctor Joseph M. de los Reyes, general chairman of the ICS meeting and regent of the International College of Surgeons, corresponded as follows, "the views expressed by Doctor Emil Seletz at the recent meeting here of the International College of Surgeons were his own and in no way either represent or reflect those of the ICS."

That men of good will can solve serious problems has been amply demonstrated by the heartening situation in injury cases in New York where a solution is on the basis of impartial medical testimony rather than a battle of paid experts.

At the present time there is a committee from the Medical and Bar Associations working out an intraprofessional code and making an honest effort to solve mutual problems. Our liaison at present is at an all time high and it is hoped that nothing will disturb this fine state of affairs.

Possibly both professions could profit by the doctrine "heal thyself."

WILLIAM F. QUINN, M.D.  
Secretary-Treasurer  
Los Angeles County Medical Association

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## EDITORIAL

*(Continued from page 261)*

siring civil marriages would get more dignified service and one more block in the legal log jam in our judiciary system would be eliminated.

Such reform requires legislation and we hope that it will be initiated. However, legislation requires support and this should be forthcoming from the members of the organized Bar. The 1959 session of the Legislature is not far off.



## Brothers-In-Law

By George Harnagel, Jr.



George Harnagel, Jr.

"... Of the sixteen Justices whom I deem preeminent, only six came to the [Supreme] Court with previous judicial experience, however limited. It would require discernment more than daring, it would demand complete indifference to the elusive and intractable factors in tracking down causes, in short, it would be capricious, to attribute acknowledged greatness in the Court's history either to the fact that a Justice had had judicial experience or that he had been without it."—From an address given by Mr. Justice Frankfurter as the First Owen J. Roberts Memorial Lecture at the University of Pennsylvania Law School, March 20, 1957.

\* \* \*

The **Vancouver, B.C.**, Bar Association maintains an Emergency Fund which is used to assist members of the association who find themselves in financial difficulty. The committee administering the fund reports that not only have there been no demands upon it during the past year, but that a substantial repayment has been received.

\* \* \*

A **Philadelphia** lawyer, having just emerged from an unsuccessful political campaign, unburdens himself:

"The first mistake in politics is going into it . . . In politics, nothing is contemptible . . . With the kind of friends you make in politics, you don't need any enemies . . . Politics makes strange bad-fellows . . . A conservative is a statesman who is enamored of existing evils, as distinguished from a liberal who wishes to replace them with others . . . To paraphrase Gray's '*Elegy*', politics is the place where 'the paths of glory lead but to the grave.' (P.S. In case we run for public office again, we were only kidding.)"—Emil F. Goldhaber in *The Shingle*.

Complaints made to the **Detroit** Bar Association regarding fees are referred to its Advisory Fee Committee. A recent report of that committee states that:

"... [D]omestic relations matters provide the basis for more than half of the calls, most calls being about matters that were never tried.

"... [N]othing seems to infuriate a woman client more than to be presented with a bill for services after she and her husband have reconciled their differences. Some callers complain because their attorney will not refund the retainer.

"Perhaps this indignation results from embarrassment, and from a desire to show hubby that not one more penny will be wasted on that 'no good' lawyer who caused all this trouble."

\* \* \*

*Matricide is among the most hideous of crimes, yet murder of one's mother tongue, alas, is not even a tort.*—Maurice Rubin in the Brooklyn Barrister.

## Federal Courts Criminal Indigent Defense Panel

The Los Angeles Bar Association recognizes with thanks the following attorneys who served on the Federal Courts Criminal Indigent Defense panel during June, 1958:

Charles G. Bakaly, Jr.	Tobias Klinger
Irvin S. Bartfield	James H. Knecht, Jr.
Frank F. Behr	Herbert Kraus
Leo Bromwich	Robert B. Krueger
Harvey E. Byron	Paul F. Marx
Harold Cutler	Philip Mirecki
George M. Dell	Volney F. Morin
Sanford R. Demain	Gerald Neiter
Paul Fitting	J. Dan Olincy
Richard F. C. Hayden	Stephen Reinhardt
Preston B. Hotchkis	Norbert A. Schlei
Harry L. Hupp	McGrew Willis

Volunteers for this vital work are still needed. Please call the Office of the Association.

